

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 2000-094270

06/16/2008

HONORABLE WARREN J. GRANVILLE

CLERK OF THE COURT  
B. McDonald  
Deputy

STATE OF ARIZONA

LINDA VAN BRAKEL

v.

KEVIN R DUNPHY (A)

KEVIN R DUNPHY  
ASPC - FLORENCE #209879  
PO BOX 8400  
FLORENCE AZ 85232

COURT ADMIN-CRIMINAL-PCR  
VICTIM SERVICES DIV-CA-SE

PCR DISMISSED

The Court has reviewed Defendant's Notice of Post-Conviction Relief, which the Court treated as a Petition for Post-Conviction Relief, the State's response, Defendant's reply, the court's file, and the relevant law.

Defendant entered a plea of guilty to the offense of attempted child molestation, a class 3 felony and dangerous crime against children in the second degree, committed on March 24, 2000. The Court suspended sentence and placed Defendant on lifetime probation. On August 11, 2006, Defendant admitted to a violation of his probation. As a result, the Court on September 18, 2006 revoked Defendant's probation and sentenced him to a presumptive term of imprisonment. This is Defendant's second Rule 32 proceeding.

Defendant claims, pursuant to Rule 32.1(f), Arizona Rules of Criminal Procedure, he should be excused from the timeliness requirement because the failure to timely file the notice of post-conviction relief was without fault on his part. Defendant's notice is not "of right." Defendant's Rule 32 of right proceeding was dismissed on August 14, 2007 for failure to file his

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Pro Per Petition for Post-Conviction Relief. Therefore he is not entitled to any relief under Rule 32.1(f). *See* Ariz.R.Crim.P. 32.1(f); *Moreno v. Gonzalez*, 192 Ariz. 131, 962 P.2d 205 (1998).

Defendant further claims *State v. Gonzalez*, 216 Ariz. 11, 162 P.3d 650 (App. 2007), constitutes a significant change of law that applies to his case. In *Gonzalez*, the Court of Appeals held that A.R.S. § 13-604.01 does not provide a sentence for attempted sexual conduct with a minor under the age of twelve. Defendant was sentenced to a term of imprisonment for attempted child molestation. Because Defendant was convicted and sentenced for attempted child molestation, not attempted sexual conduct with a minor, Defendant has not demonstrated that *State v. Gonzalez* is a significant change in the law that applies to his case.

IT IS THEREFORE ORDERED denying Defendant's Notice of Post-Conviction Relief, which the Court treated as a Petition for Post-Conviction Relief.